

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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Anthony Amaker,

Plaintiff,

v.

Mark L. Bradt, et al.,

Defendants.

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10-CV-977  
Decision and Order

On August 27, 2014, Magistrate Judge H. Kenneth Schroeder, Jr., issued a Report and Recommendation in which he recommended that several of the plaintiff's claims be dismissed, including his claim that his Eighth Amendment rights had been violated by sexually inappropriate pat frisks. Docket Item 60 at 20. After District Judge Richard J. Arcara adopted the Report and Recommendation, Docket Item 80, the case was transferred to the undersigned on March 7, 2016, Docket Item 88.

In recommending dismissal of Amaker's Eighth Amendment claim, Judge Schroder relied on *Boddie v. Schneider*, 105 F.3d 857, 861 (2d Cir. 1997), which suggested that an isolated incident of forcible touching does not violate a prisoner's constitutional rights. See *id.* But on August 11, 2015, the Second Circuit decided *Crawford v. Cuomo*, 796 F.3d 252 (2d Cir. 2015), "clarify[ing] the rule set forth in *Boddie*," and finding that "a single incident of sexual abuse, if sufficiently severe or serious, may violate an inmate's Eighth Amendment rights." *Crawford*, 796 F.3d at 257.

Based on *Crawford*, the plaintiff moved for reconsideration of his Eighth Amendment claim for sexually inappropriate frisks. Docket Item 82. The defendants responded, Docket Item 85, and the plaintiff replied, Docket Item 87.

This Court now finds that *Crawford* casts some doubt on Judge Schroeder's recommendation on Amaker's Eighth Amendment claim for sexually inappropriate pat frisks and on Judge Arcara's adoption of that recommendation. For that reason, the motion for reconsideration, Docket Item 82, is granted, the above claim is reinstated, and the case is referred back to Judge Schroeder for discovery and any further proceedings, pursuant to the referral order of April 26, 2011, Docket Item 11.<sup>1</sup> This decision is without prejudice to the defendants' bringing another motion before Judge Schroeder to dismiss the plaintiff's Eighth Amendment claim or for summary judgment on that or any other remaining claim.

SO ORDERED.

Dated: June 1, 2018  
Buffalo, New York

**s/Lawrence J. Vilardo**  
LAWRENCE J. VILARDO  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> The Court recognizes that at oral argument, the Court planned to refer the case back to Judge Schroeder without deciding the motion. Docket Item 93. On further consideration, however, granting the motion without prejudice to the defendants' ability to bring another motion to dismiss before Judge Schroeder is the better procedural means toward the same end.